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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

TROY JOSEPH GATLIN,

Defendant and Appellant.

A134474

(San Mateo County  
Super. Ct. No. SC073974)

Appellant Troy Joseph Gatlin pled guilty to possession of methamphetamine. (Former Health & Saf. Code, § 11377, subd. (a) [Stats. 2008, ch. 292, § 3].) He was sentenced to two years eight months in state prison. On appeal, he contends that the trial court erred by (1) denying his suppression motion and (2) awarding him insufficient presentence conduct credits. We affirm the judgment, including the award of sentencing credits.

**I. FACTS**

About 6:20 p.m. on July 8, 2011,<sup>1</sup> San Mateo County Deputy Sheriff Chad Buck was on duty in San Bruno. He saw appellant Troy Joseph Gatlin riding a bicycle northbound on San Mateo Avenue<sup>2</sup> approaching Huntington Avenue. The deputy's unmarked car was moving behind him, also going northbound. Gatlin veered from the

<sup>1</sup> All subsequent references to dates refer to the 2011 calendar year unless otherwise indicated.

<sup>2</sup> In his written report, Deputy Buck mistakenly reported that Gatlin was riding on San Bruno Avenue.

right side of the roadway into the middle of it at the intersection, then went back to the side of the road, crossed Huntington Avenue and rode up onto the sidewalk. Deputy Buck and the three local police officers with him<sup>3</sup>—all in full uniform—were in an unmarked car. They pulled up to the corner and made a traffic stop. Deputy Buck explained the reason for the stop to Gatlin, who was cooperative. When the deputy asked if he could conduct a search; the bicyclist agreed. Gatlin had a plastic baggie in his hand containing 0.41 grams of methamphetamine—a usable quantity.

Gatlin was arrested. In August 2011, he was charged by information with possession of methamphetamine. The information also alleged nine prior convictions including a 1983 assault. (Former Health & Saf. Code, § 11377, subd. (a);<sup>4</sup> Pen. Code,<sup>5</sup> § 1170.12, subd. (c)(1)-(2); former §§ 667.5, subd. (b) [Initiative Measure Prop. 83, § 9], 1203, subd. (e)(4) [Stats. 2009, ch. 582, § 5].) At his arraignment, Gatlin pled not guilty to the charge and these allegations.

On November 1, Gatlin moved to suppress evidence, arguing that his July 8 detention was improper because he did not commit any criminal offense warranting a traffic stop, rendering the search unreasonable. (§ 1538.5.) The People opposed the motion. At the hearing on the suppression motion, Deputy Buck and Gatlin both testified. Gatlin testified that he pulled up onto the sidewalk after the police car stopped, swerving to avoid hitting the car or the officers. Deputy Buck testified that Gatlin veered into the roadway and rode the bicycle up onto the sidewalk before he conducted the traffic stop. The trial court denied the motion to suppress, finding that Deputy Buck—whom it found to be a credible witness—had an objective legal basis to stop Gatlin because the bicyclist veered into the vehicular traffic on the roadway and because he rode his bicycle onto the sidewalk.

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<sup>3</sup> Two were Daly City police officers; the third was a San Bruno police corporal.

<sup>4</sup> Although Health and Safety Code section 11377 has been amended since the date of this charged offense, the current and former provisions are substantively the same for our purposes. (Compare Stats. 2011, ch. 15, § 171 with Stats. 2008, ch. 292, § 3.)

<sup>5</sup> All subsequent code references are to the Penal Code unless otherwise indicated.

On November 17, pursuant to a negotiated agreement, Gatlin withdrew his not guilty plea and pled no contest to the possession of methamphetamine charge. He also admitted that he was ineligible for probation and that he had a prior conviction for assault that constituted a strike. He was to be sentenced to no more than 32 months in prison. The trial court accepted the plea and found Gatlin guilty of the possession of methamphetamine offense. The remainder of the information—including a second strike—was dismissed.

Gatlin moved to strike his assault strike, without success. (§ 1385, subd. (a).) He was sentenced to a total term of two years eight months in state prison—the lower term of 16 months for possession of methamphetamine, doubled because of the strike.<sup>6</sup> (Former Health & Saf. Code, § 11377, subd. (a); § 1170.12, subd. (c)(1); former § 18 [Stats. 1976, ch. 1139, § 98, p. 5089].) He was given 284 days of presentence credit against his prison term—190 days of custody credit and 94 days of conduct credit.

## **II. SUPPRESSION OF EVIDENCE**

First, Gatlin challenges the trial court’s denial of his suppression motion. He raises two grounds, but we need only address one of them. He argues that the traffic stop was initiated before he had reached the corner of the intersection at which he was said to have begun riding his bicycle on the sidewalk. Thus, he reasons, Deputy Buck had no reasonable suspicion to conduct a traffic stop at the time of the stop. (See § 1538.5.)

The Fourth Amendment bars unreasonable searches and seizures. A traffic stop—a form of investigatory detention—is reasonable within the meaning of the Fourth Amendment if the detaining official can point to specific articulable facts that, in the totality of the circumstances, provide an objective manifestation that the detained person is suspected of having committed a crime. (*People v. Hernandez* (2008) 45 Cal.4th 295, 299.) If the traffic stop of Gatlin was made without a reasonable suspicion, then the evidence of the methamphetamine found during the later search may be suppressed. (See § 1538.5; see also *Florida v. Bostick* (1991) 501 U.S. 429, 433-434.)

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<sup>6</sup> That term was ordered to run concurrent to a term being served in another case.

When resolving a suppression motion, the trial court must first find the historical facts. (*People v. Ayala* (2000) 23 Cal.4th 225, 255.) Gatlin's claim of error on appeal is that the trial court erred in finding the facts on which it relied to uphold the validity of the traffic stop. In essence, he contends that the facts that the trial court relied on were not credible. Our standard of review of the trial court's findings of fact is well settled. We defer to those findings of fact if they are supported by substantial evidence. (*Ibid.*) The power to judge the credibility of witnesses, to resolve conflicts in the testimony, to weigh the evidence and to draw factual inferences is vested in the trial court. (*People v. Leyba* (1981) 29 Cal.3d 591, 596.) When we construe the record, we view it in the light most favorable to those findings. (*People v. Woods* (1999) 21 Cal.4th 668, 673-674.)

One basis of the trial court's finding that the traffic stop was proper was that the officers had a reasonable suspicion that Gatlin violated a San Bruno ordinance prohibiting an adult from riding a bicycle on the sidewalk. (See San Bruno Mun. Code, § 7.48.090.) Noting Deputy Buck's testimony that the traffic stop was made at the corner, Gatlin argues that it was physically impossible for the bicyclist to have ridden onto the sidewalk beyond this intersection. He reasons that the police vehicle must have stopped ahead of his bicycle position in order to prevent him from fleeing. From this assumption, he further reasons that if the stop was made at the corner, he could not have ridden beyond the intersection onto the sidewalk.

This argument is flawed for several reasons. First, Gatlin's view of the evidence conflicts with Deputy Buck's direct testimony that he saw Gatlin ride up onto the sidewalk at the corner and that he made a traffic stop after he saw Gatlin do so. Second, Gatlin's assumption of the relative location of the vehicle and the bicycle at the time of the traffic stop are also contradicted by the deputy's testimony that the police vehicle did *not* stop in front of Gatlin, but at the corner—necessarily, behind him. The trial court expressly found that Deputy Buck's testimony was credible. It necessarily rejected Gatlin's contrary testimony that the traffic stop occurred before he rode his bicycle onto the sidewalk. On appeal, we must defer to the trial court on these credibility issues. (*In re Arturo D.* (2002) 27 Cal.4th 60, 77; *People v. Leyba*, *supra*, 29 Cal.3d at p. 596.) We

are compelled to draw every reasonable inference *in support* of those findings. (See, e.g., *People v. Woods, supra*, 21 Cal.4th at pp. 673-674.) We are not permitted to make the assumption Gatlin asks us to make that would undermine those findings.

Gatlin's other reasoning is also flawed. He suggests that his view of the relative placement of the vehicle and the bicycle at the time of the traffic stop bolsters his contention that Deputy Buck could not have formed a reasonable suspicion for a traffic stop based on his riding the bicycle on the sidewalk. He argues that the evidence compels the conclusion that any riding on the sidewalk occurred after the traffic stop, which cannot constitute justification for the detention.

The reasonableness of a traffic stop turns on the circumstances known to the law enforcement official when the stop was conducted. (See *People v. Sanders* (2003) 31 Cal.4th 318, 334.) Even if we assume *arguendo* that Deputy Buck decided to *initiate* a traffic stop on an insufficient basis before observing Gatlin ride onto the sidewalk, his testimony that the sidewalk violation that occurred before the stop was *conducted* formed an independent and lawful basis for the stop. Substantial evidence supported the trial court's factual findings. The municipal ordinance violation provided a proper basis for a traffic stop made after that violation was observed. Based on those findings, the totality of the circumstances supported a reasonable suspicion that Gatlin had violated the municipal bicycling ban, making the traffic stop reasonable. (See *People v. Souza* (1994) 9 Cal.4th 224, 231; *People v. Mims* (1992) 9 Cal.App.4th 1244, 1248.) The trial court properly denied Gatlin's motion to suppress evidence obtained as a result of a search conducted during that traffic stop.<sup>7</sup>

### **III. PRESENTENCE CREDITS**

Gatlin also challenges the presentence credits awarded to him. Statute law provides that a defendant who commits a crime on or after October 1, 2011, receives two

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<sup>7</sup> As this ground was sufficient, we need not address Gatlin's additional contention that a traffic stop was improper because there was no evidence that he rode a bicycle at a speed less than the normal speed of traffic to find that he had violated section 21202 of the Vehicle Code.

days of presentence conduct credit for every two days of presentence time served. A less generous calculation of credits applies to offenses committed before that date. (§ 4019, subds. (f), (h); see former § 4019, subds. (b)-(c) [Stats. 2010, ch. 426, § 2].) As Gatlin's offense was committed before the effective date of the new law, the trial court awarded him 94 days of conduct credit for 190 days of presentence custody, based on the earlier sentencing scheme.

On appeal, Gatlin contends that the trial court's failure to apply the amended version of section 4019 to him violated his federal and state right to equal protection. He reasons that he is similarly situated with inmates whose offenses occurred after October 1, 2011, and that there is no rational basis for treating him differently from these inmates. (See § 4019 [Stats. 2011-2012 1st Ex.Sess., ch. 12, § 35]; former § 4019 [Stats. 2010, ch. 426, § 2].) He concedes that two Courts of Appeal have upheld the prospective application of this provision against equal protection challenges, but argues that these decisions are wrongly decided. (See *People v. Borg* (2012) 204 Cal.App.4th 1528, 1535-1539 [First District, Division One], petn. for review pending, petn. filed May 21, 2012, S202328; see also *People v. Olague* (2012) 205 Cal.App.4th 1126, 1136 [Sixth District], petn. for review pending, petn. filed June 14, 2012, S203298.)

Recently, the California Supreme Court has weighed in on this issue. In a case involving an earlier version of section 4019, a unanimous court held that equal protection did not require the retroactive application of that statute. The two classes of inmates in that case were not similarly situated for purposes of the challenged law. The important correctional goal of a statute creating incentives for good behavior is not served by rewarding prisoners who served time before those incentives took effect. These prisoners could not have modified their behavior in response to the later-created incentive. For this reason, the court held that prisoners who served time before and after the effective date of the statute were not similarly situated. (*People v. Brown* (June 18, 2012, S181963) \_\_\_\_ Cal.4th \_\_\_\_, \_\_ [2012 D.A.R. 8122, 8126].)

The reasoning of *Brown* applies with equal force to the prospective-only application of the current version of section 4019. The trial court properly calculated Gatlin’s presentence credits.

The judgment—including the award of sentencing credits—is affirmed.

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Reardon, J.

We concur:

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Ruvolo, P.J.

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Sepulveda, J.\*

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\* Retired Associate Justice of the Court of Appeal, First Appellate District, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.